



California Regional Water Quality Control Board

San Francisco Bay Region

Alan C. Lloyd, Ph.D.
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Date: **JAN 19 2006**
File No. 2158.11 (RAD)

Certified Mail No. 70042510000127692219

Albert Aubry
Attn: Mollie Taylor
120 S Amphlett Blvd
San Mateo, CA 94401

Subject: Administrative Civil Liability Complaint No. R2-2006-0003

For the facility located at:

**Tresser S Towing & Auto Salvage
120 S Amphlett Blvd
San Mateo, San Mateo County**

WDID No. 2 41 I 010153

Dear Mollie Taylor:

Enclosed is a Complaint for Administrative Civil Liability issued to Albert Aubry for the subject site. The Complaint alleges that Albert Aubry has violated its waste discharge requirements by failing to submit its 2004/2005 annual report by July 1, 2005, as required. The complaint proposes administrative civil liability of \$13,900.

A public hearing on this matter has been scheduled for the March 8, 2006, Water Board Meeting in the Elihu M. Harris State Building, First Floor Auditorium, located at 1515 Clay Street, Oakland, California. The meeting agenda will be mailed to you prior to the hearing.

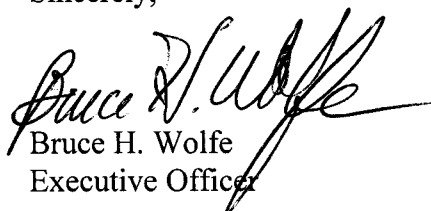
At this time, you have three options:

1. You can appear before the Water Board during the scheduled meeting to contest the Complaint; written comments are not later than 30 days from the date of the Complaint. At that time, the Board may impose the Administrative Civil Liability in the amount proposed, for a different amount, decline to seek civil liability, or refer the case to the Attorney General.
2. You can waive the right to a hearing and pay the liability. If so, sign the waiver and pay the full amount to the Water Board at 1515 Clay St. Suite 1400, Oakland, CA 94612, within 30 days from the date of the Complaint.
3. You can waive the right to a hearing and request that a portion of the liability be suspended and an amount equal to the suspended amount be dedicated to a local Supplemental

Environmental Project (SEP). You also agree to pay the remaining unsuspended amount within 30 days from the date of the Complaint. If so, sign the waiver with your intent to undertake a SEP and submit it to the Water Board at 1515 Clay St. Suite 1400, Oakland, CA 94612, within 30 days from the date of the Complaint. Attached is a description of the Water Board's program for SEPs. Staff can assist you in identifying and developing an acceptable project.

Please contact Rico Duazo at (510) 622-2340 if you have any questions.

Sincerely,


Bruce H. Wolfe
Executive Officer

Enclosures:

Complaint No. R2-2006-0003
Attachment 1 - SEP Information

cc: Water Board
State Water Resources Control Board, Office of the Chief Counsel - Dorothy Dickey
State Water Resources Control Board, Division of Water Quality - Bruce Fujimoto
State Water Resources Control Board, Office of Statewide Consistency - Margie Young

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

| | | |
|--|---|----------------------------|
| In the Matter of: |) | |
| |) | COMPLAINT NO. R2-2006-0003 |
| Albert Aubry dba |) | for |
| Tresser S Towing & Auto Salvage |) | ADMINISTRATIVE |
| 120 S Amphlett Blvd |) | CIVIL LIABILITY |
| San Mateo, San Mateo County |) | |
| _____ |) | |

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Albert Aubry dba Tresser S Towing & Auto Salvage (hereinafter the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) may impose civil liability pursuant to Section 13385 of the California Water Code.
2. The Water Board will hold a hearing on this matter on March 8, 2006, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Water Board. You will be mailed an agenda no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Water Board not later than 30 days from the date of this Complaint, so that such comments may be considered. Any written evidence submitted to the Water Board after 30 days from the date of this Complaint will not be accepted or responded to in writing.
3. At the hearing the Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. The following facts are the basis for the alleged violation in this matter:
 - a. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge Identification Number is 241I010153.

- b. The General Permit requires the Discharger to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
- c. The Discharger is alleged to have violated its waste discharge requirements by failing to submit its 2004/2005 annual report by July 1, 2005.
- d. On August 5, 2005, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 5, 2005, but failed to do so.
- e. By certified mail dated September 7, 2005, the Executive Officer issued a second NNC letter to the Discharger. The return receipt request indicated that the Discharger received the second NNC on September 8, 2005. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted. The Discharger was required to respond by October 7, 2005, and again failed to do so.
- f. As of the date of this Complaint, the Discharger has failed to submit its 2004/2005 annual report. The Discharger has been in violation of the General Permit for a total of 168 days (July 2, 2005 through December 16, 2005).

PROPOSED CIVIL LIABILITY

- 5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.
- 6. Under California Water Code (CWC) Section 13385(c)(1), the Water Board can impose a maximum civil liability of \$10,000 per day of violation. This Complaint addresses violations for the 168-day period from July 2, 2005 through December 16, 2005.
- 7. Under Section 13385(e) of the California Water Code, the Water Board shall consider the following factors in determining the amount of civil liability to be imposed:
 - a. The nature, circumstances, extent, and gravity of the violation;
The Discharger was sent two Notice of Noncompliance letters. Also, the Discharger, by submitting an NOI, indicated its intent to comply with all requirements of the General Permit, including the requirement to submit an annual report.

These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at its site.

- b. Discharger's ability to pay;
The Discharger has not demonstrated an inability to pay the proposed amount.
- c. Prior history of violations;
The discharger has submitted its annual reports from previous years in a timely manner.
- d. Degree of culpability;
The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.
- e. Savings resulting from the violation; and
The Discharger has realized cost savings by: failure to perform required sampling and analyses, failure to prepare the annual report, and failure to implement and/or document its SWPPP. Assuming an average-sized site, Board staff estimates the minimum economic savings for not submitting an annual report to be \$2000/year.
- f. Other matters that justice may require.
A site inspection on October 17, 2005, showed that best management practices were not being implemented (e.g. general housekeeping was poor, spare parts were uncovered and potentially exposed to rain, fluid draining area was uncovered) and that there was a threat of pollutants being allowed to discharge along with stormwater. Board staff left a message for the Discharger at the facility but it was not returned.

Staff time to prepare a Complaint and supporting information is estimated to be 15 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$1,500.

Basis for Penalty Amount

If this case were to proceed to trial, a court must consider the following factors in determining an appropriate civil liability amount: "the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require" (Water Code Section 13385(e)). Using this section as a guide as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy, the Settlement Amount was derived as follows:

Table 1. Procedure to set penalty amount

| Step | Basis |
|---|---|
| A. Initial Liability | Based on failure to submit an annual report for 168 days at \$50 per day, the initial liability assessment is \$8,400. The maximum amount of \$10,000 per day was not used because of the nature and gravity of violation, which consists of failure to: submit an annual compliance report, certify that the site is in compliance, and demonstrate that an annual compliance inspection/review was completed for the site. |
| B. Beneficial Use Liability | It is not included here because an estimation of the dollar value of any impacts of the violation on beneficial uses is complicated by the limited information available to determine the extent of impacts to beneficial uses. |
| C. Base Amount | The Base Amount is \$8,400. The Base amount is a single amount that is a result of combining figures derived from the first two steps. |
| D. Adjustment for discharger's conduct | Factors such as culpability, notification, cleanup and cooperation, and history of violations are applied to adjust the Base Amount from step C. See details in Table 2. The adjusted amount for failure to submit an annual report is \$10,400 |
| E. Adjustment for other factors | No adjustment is made to the figure from step D. |
| F. Economic Benefit | The Discharger's economic benefit from not submitting an annual report is estimated to be \$2,000 (e.g. costs for performing necessary visual observations, costs for collecting stormwater samples, laboratory analyses, costs for preparing an annual report). |
| G. Staff Costs | Staff costs resulting from the violation are \$1,500 and therefore, need to be added to the figure determined from steps A through F. |
| H. Adjustment for ability to pay | No adjustment is necessary to change the figure from Steps A through G with respect to the Discharger's ability to pay and ability to continue in business. |
| I. Check against statutory limits | The final amount of \$13,900 is less than the statutory maximum. |

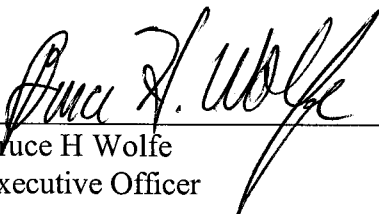
Table 2. Conduct Factors to adjust Base Amount

| Factor | Adjustment for |
|-------------------------|--|
| Culpability | Discharger's degree of culpability regarding failure to submit an annual report. Higher penalty amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. The test is what a reasonable and prudent person would have done or not done under similar circumstances. The Discharger was sent two Notice of Noncompliance letters. Also, the Discharger submitted an NOI indicating its intent to submit an annual report as required by the General Permit. |
| Notification | Extent to which the discharger reported the violation as required by law or regulation. The Discharger did not notify Water Board staff of its failure to submit an annual report in a timely manner. |
| Cleanup and Cooperation | Extent to which the Discharger cooperated in returning to compliance (i.e. submittal of an annual report). The Discharger failed to respond to multiple requests for a 2004/2005 annual report. |
| History of Violations | The Discharger has submitted its previous annual reports in a timely manner. |

8. The Executive Officer of the Water Board proposes that an administrative civil liability be imposed in the amount of \$13,900. Of this amount, \$1,500 is for recovery of staff costs.

The Executive Officer will not consider any request to reduce the amount of proposed liability based on the Discharger's alleged inability to pay unless the Discharger submits adequate proof of financial hardship, e.g., two years of income tax returns or an audited financial statement.

9. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including referral to the Attorney General.



Bruce H Wolfe
Executive Officer

JAN 19 2006

DATE

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 1515 Clay Street, Suite 1400, Oakland, CA 94612. Payment of the civil liability must be made within 30 days from the date of this Complaint. Any waiver will not be effective until 30 days from the date this Complaint was issued, to allow other interested persons to comment on this action

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

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| 120 S Amphlett Blvd |) | CIVIL LIABILITY |
| San Mateo, San Mateo County |) | |
| _____ |) | |

WAIVER OF HEARING

I agree to waive my right to a hearing before the San Francisco Bay Regional Water Quality Control Board with regard to violations alleged in Complaint No. R2-2006-0003. I understand that I am giving up my right to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, the civil liability proposed.

By waiving my right to a hearing, I agree to [CHECK ONE OF THE FOLLOWING]:

- ☐ Pay the full civil liability proposed in Complaint No. R2-2006-0003 within 30 days from the date of this Complaint.

- ☐ Satisfactorily undertake a Supplemental Environmental Project (SEP) in the amount of up to \$13,900 and pay the remainder of the civil liability proposed in Complaint No. R2-2006-0003 within 30 days from the date of this Complaint. The SEP must be acceptable to the Executive Officer and in conformance with the general criteria for SEPs set forth in the State Water Resources Control Board's Guidance to Implement the Water Quality Enforcement Policy, Resolution No. 96-030, as amended by Resolution No. 97-085.

Date

Signature of Discharger's
Authorized Representative

Printed Name

Title

(to be included with ACL Complaint to discharger)

Subject: SUPPLEMENTAL ENVIRONMENTAL PROJECTS AS COMPONENTS OF
ADMINISTRATIVE CIVIL LIABILITIES

The San Francisco Bay Regional Water Quality Control Board (Water Board) accepts and encourages Supplemental Environmental Projects (SEP's) in lieu of a portion of any Administrative Civil Liability (ACL) or Mandatory Minimum Penalty (MMP) imposed on dischargers in the Bay Area. This letter is to inform you of the types of projects the Water Board will accept and the procedures for proposing and implementing a project.

The overall goals of the Water Board's program for SEP's: 1) monetary penalties should be directed to projects within the Region, especially in the watershed where the discharge occurred; 2) projects should benefit the environment; 3) projects should focus on education, outreach and/or restoration. The Water Board identifies four categories of SEP's that may receive funding: pollution prevention, pollution reduction, environmental restoration, and environmental education. The project should not be used to mitigate the damage caused directly by the original violation or to implement measures required to comply with permits or regulations, since this is the responsibility of the discharger regardless of any penalties involved.

The Water Board does not select projects for SEP's; rather, it is the discharger's responsibility to propose the project (or projects) they would like to fund and then obtain approval from the Water Board. However, the Water Board can facilitate this process by maintaining a list of possible projects, which is made available to dischargers interested in pursuing the SEP option. Dischargers are not required to select a project from this list, however, and may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

In cases where an SEP is approved by the Water Board, payment of a portion of the ACL or MMP will be suspended if the project is satisfactorily completed on schedule. The SEP can only be used to offset a portion of a proposed penalty; therefore the final ACL package will consist of a monetary penalty, reimbursement of staff costs, and a project. Note that the total penalty is not reduced by implementing a project; rather the method of payment is being modified in order to achieve a greater environmental benefit.

The State Water Resources Control Board's Enforcement Policy requires third party oversight of SEPs. The San Francisco Regional Water Quality Control Board has contracted with the San Francisco Estuary Project (SFEP) to provide this oversight. SFEP serves as liaison between the discharger, the Regional Board and the fund recipient and will monitor project implementation and expenses. SFEP staff will also maintain a current list of potential projects and can assist in the selection process. This coordination work is funded by allocation of 6% of any SEP over \$20,000 to SFEP.

Questions regarding the San Francisco Bay Regional Water Quality Control Board's SEP program may be directed to Carol Thornton at the San Francisco Estuary Project, (510) 622-2419.

SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD'S SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The San Francisco Bay Regional Water Quality Control Board (Water Board), under the guidance of the State Water Quality Control Board's Enforcement Policy, accepts and encourages Supplemental Environmental Projects (SEPs) in lieu of a portion of an Administrative Civil Liability (ACL) or Mandatory Minimum Penalty (MMP) imposed on dischargers in the Bay Area.

Guidelines for SEP potential projects list

The Water Board identifies four categories of Supplemental Environmental Projects (SEP's) that may receive funding:

1. pollution prevention
2. pollution reduction
3. environmental restoration
4. environmental education

Further, an SEP should be located near the discharger, in the same local watershed, unless the project is of region-wide importance.

The Water Board does not select projects for SEP's; rather, the discharger identifies a project it would like to fund and then obtains approval from the Water Board. The Water Board facilitates the process by maintaining a list of possible projects, which is made available to dischargers interested in pursuing the SEP option. These potential projects come from local environmental groups, research and other non-profit organizations, including municipalities. Dischargers are not required to select a project from this list, however, and may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

For the Water Board's SEP list, it is helpful to have the following information:

1. name of the organization and contact person, with phone number.
2. name and location of the project, including watershed (creek, river, bay) where it is located.
3. short, one paragraph or less, description of the project, showing how it fits into one of the above four RWQCB categories.
4. general cost of the project.

The State Water Resources Control Board's Enforcement Policy requires third party oversight of SEPs. The Water Board has contracted with the San Francisco Estuary Project (SFEP) to provide this oversight. SFEP serves as a liaison between the discharger, the Water Board and the fund recipient and will monitor project implementation and expenses. SFEP staff will also maintain a current list of potential projects and can assist in the selection process. This coordination work is funded by allocation of 6% of the SEP funds to SFEP for projects over \$20,000.

Questions regarding the San Francisco Bay Regional Water Quality Control Board's SEP program may be directed to Carol Thornton at the San Francisco Estuary Project, (510) 622-2419 or ct@rb2.swrcb.ca.gov